IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1062 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAMAD HAYAT SUMAR SOTA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1062 of 1997

MR PM VYAS for Appellant

MR KP RAVAL, ADDL.PUBLIC PROSECUTOR for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 04/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal, filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated September 30, 1997, rendered by the learned Sessions Judge, Kutch at Bhuj in Sessions Case No.111 of 1996, by which the appellant is convicted under Section 302 of the Indian Penal Code and sentenced to suffer R.I. for life and fine of Rs.500/-, in default, R.I. for six months. A direction has been given by the learned Judge that the appellant would be entitled to benefit of set off.

2. Haji Hasam Ramjan Sota, who is complainant in the case, resides at village Sotavandh, Taluka : Lakhtar, District : Kutch. He had two sons and two daughters. Youngest son Siddiq was married to Amirkhatun, daughter of Mamad Rahim Ali before one month of incident which took place on August 9, 1996. Before marriage of Amirkhatun with son of the complainant, a proposal for betrothal of Amirkhatun with the appellant was made by father of the appellant, but that was turned down by Mamad Rahim, who was father of Amirkhatun. The appellant was making grievance before village people that he was owner of 200 goats and, therefore, Mamad Rahim, who was father of Amirkhatun, was not justified in spurning proposal for betrothal of Amirkhatun with him made by his father. Because of marriage of Amirkhatun with the deceased, the appellant was bearing a grudge against the deceased. On the day of incident, the deceased was coming with milk from Sim of village Junechay. The appellant came from behind and inflicted an axe blow with force on neck of the deceased, as a result of which the deceased fell down and died on the spot. The incident in question was witnessed by Gulshan Amad Sota and Mistry Yarmamad Husen Sota. They informed the complainant that his son was killed by the appellant. The complainant, therefore, called Deputy Sarpanch of the village at the place of incident and lodged complaint with P.S.O. of Nara Police Station. The complaint lodged by Hari Hasam Ramjan Sota was investigated by Mr.D.N.Yadav, who was then incharge P.S.I. of the Police Station. He held inquest on the dead body of the deceased and drew panchnama of place of incident. The investigating officer recorded statements of those persons who were found to be conversant with the facts of the case. During the course of investigation, the appellant was arrested. While in custody, he made disclosure statement, pursuant to which bloodstained axe which was used by him in commission of crime and his bloodstained

shirt and surval were recovered. The dead body of the deceased was also sent for postmortem examination. The incriminating articles seized during course of investigation were sent to laboratory for analysis. On conclusion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate, First Class, Nakhatrana for commission of offence punishable under Section 302 I.P.C. As the offence punishable under Section 302 I.P.C. is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kutch at Bhuj for trial where it was numbered as Sessions Case No.111 of 1996.

3. The learned Sessions Judge framed charge against the appellant at Exh.1 under Section 302 I.P.C. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Chhotelal Chhangaram Jonvala as PW.1 at Exh.6, (2) Haji Hasam Ramjan as PW.2 at Exh.10, (3) Gulshan Amad as PW.3 at Exh.11, (4) Yarmamad Husen as PW.4 at Exh.12, (5) Ramjan Alimamad as PW.5 at Exh.13, (6) Mamad Rahim Ali as PW.6 at Exh.14, (7) Jaysukhlal Amenlal Acharya as PW.7 at Exh.16, (8) Hanif Husen Sota as PW.8 at Exh.18, (9) Mamad Aman as PW.9 at Exh.21, (10) Husen Alana Sota as PW.10 at Exh.24, (11) Martaji Sakaraji Ninama as PW.11 at Exh.26, (12) Mahendrasinh Ravubha Jhala as PW.12 at Exh.30, (13) Hashan Abdula as PW.13 at Exh.33, (14) Mitharam Pujaram Kunvadia as PW.14 at Exh.34, and Dayaram Netram Yadav as PW.15 at Exh.39, to prove its case against the appellant. The prosecution also produced documentary evidence such as postmortem notes of the deceased at Exh.7, map of place of occurrence at Exh.17, panchnama indicating holding of inquest on the dead body of the deceased at Exh.19, panchnama of place of incident at Exh.20, panchnama indicating arrest of the appellant at Exh.22, panchnama indicating discovery of bloodstained axe and bloodstained clothes of the appellant at Exh.23. Panchnama of seizure of clothes of the deceased at Exh.25, entry from station diary at Exhs. 27 & 28, report of Serologist at Exh.37, complaint of Haji Hasam at Exh.40 etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of Code of 1973. In his further statement, case of the appellant was that of general denial. It was claimed by the

appellant that a false case was lodged against him, but he was innocent. However, neither he tendered any evidence on oath, nor examined any one as defence witness to substantiate his claim that the case filed by the prosecution was false.

5. On appreciation of evidence adduced by the prosecution, it was held by the learned Judge that it was proved by the prosecution beyond reasonable doubt that deceased Siddiq Hasam died a homicidal death. According to the learned Judge, testimony of eye witness Gulshan Amad was reliable as well as trustworthy and was supported by testimony of Yarmamad, which in turn, established that the appellant caused murder of the deceased by inflicting an axe blow on neck of the deceased. In view of last finding recorded by the learned Judge, it was further held that the appellant was liable to be convicted under Section 302 I.P.C. Having regard to abovereferredto conclusions, the learned Judge has convicted the appellant under Section 302 I.P.C. by judgment dated September 30, 1997, giving rise to instant appeal.

6. Mr.P.M.Vyas, learned counsel of the appellant, contended that the evidence on record and more particularly the evidence of eye witness Gulshan Amad is not properly appreciated in the light of defence taken by the appellant that a false case was lodged at the instance of the complainant and, therefore, impugned judgment should be set aside. It was argued that having regard to the contradictions brought on record with reference to his earlier police statement, testimony of eye witness Gulshan Amad should have been disbelieved as unreliable. According to the learned counsel of the appellant, the prosecution has examined those witnesses who are relatives of the complainant, but has failed to examine any independent witness to support its case and, therefore, after drawing adverse inference against the prosecution, the appeal should be accepted.

7. Mr.K.P.Raval, learned A.P.P., argued that testimony of eye witness Gulshan Amand is trustworthy, cogent and supported by testimony of Yarmamad Husen as well as medical evidence on record and, therefore, the learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, was justified in acting upon his testimony for the purpose of basing conviction of the appellant under Section 302 I.P.C. It was argued that testimony of witness Mamad Rahim Ali establishes that as he had spurned proposal made by father of the appellant for betrothal of his daughter

Amirkhatun with the appellant and had got married his daughter to the deceased, the appellant was bearing a grudge against the deceased and motive established also lends corroboration to the reliable testimony of eye witness Gulshan Amad. What was pointed out to the Court was that the axe used by the appellant in commission of the crime and clothes put on by the appellant at the time of incident were bloodstained having the same group of blood as that of the deceased which in turn establishes that the appellant was in close proximity of the deceased when the deceased was fatally wounded and this circumstance also lends corroboration to the testimony of eye witness Gulshan Amad. It was contended that the learned Judge has recorded cogent and convincing reasons for convicting the appellant under Section 302 I.P.C. and as the learned counsel of the appellant has failed to dislodge them, the appeal should be dismissed.

8. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. The fact that deceased Siddiq died a homicidal death is not subject matter of dispute before this Court. Having regard to the contents of inquest panchnama, testimony of Dr. Jonvala and postmortem notes of the deceased produced at Exh.7, the learned Judge was justified in coming to the conclusion that it was proved by the prosecution that the deceased died a homicidal death. The said finding being eminently just is hereby confirmed.

9. Gulshan Amad, PW.3 Exh.11, has stated in his substantive evidence before the Court that on the day of incident, the appellant gave an axe blow on the neck of the deceased and as he raised shouts, the appellant started fleeing. It is further mentioned by him that witness Yarmamad Husen was coming from opposite direction and, therefore, he asked Yarmamd Husen to apprehend the appellant, but the appellant run away in another direction before he could be apprehended by Yarmamad Husen. It was asserted by this witness in his testimony that Yarmamad Husen was coming from southern direction and he himself went to the place of incident while grazing his cattle. In his cross, it was also asserted by the witness that he raised shouts when blow was received by the deceased and the deceased fell down and at that time Yarmamad Husen was at a distance of 50 ft. The suggestions made by the defence that he did not see the incident nor saw the appellant inflicting blow on the deceased and was deposing falsely at the instance of the

complainant were emphatically denied by him. It was admitted by the witness that it was not mentioned in his police statement that he was going towards Sotavandh from Mankavandh.

9.1 Reassessment of the evidence of this witness makes it clear that he has narrated the incident in a natural manner without exaggerations or embellishments. No major contradictions and/or omissions could be brought on record by the defence. It could not be even remotely suggested by the defence that this witness was on inimical terms with the appellant and was, therefore, deposing falsely against the appellant. His presence at the place of incident was natural, as he had gone there for the purpose of grazing his cattle. Further, testimony of this witness is corroborated by the medical evidence on record regarding injury sustained by the deceased. His evidence also gets corroboration from the evidence of witness Yarmamad Husen, PW.4, Exh.12, who has stated that witness Gulshan Amad was present at the place of incident and had informed him that the appellant had given an axe blow on neck of the deceased and killed him. Under the circumstances, there is no manner of doubt that the prosecution has satisfactorily established that on the day of incident the appellant inflicted an axe blow on neck of the deceased and caused his murder.

10. The evidence of witness Mamad Aman, PW.9 Exh.21, read with that of investigating officer Mr.Yadav and contents of discovery panchnama produced at Exh.23 clinchingly establish that while in police custody the appellant made disclosure statement, pursuant to which the axe used by him in commission of crime, which was concealed beneath a trunk, and bloodstained shirt and surval were discovered. The report of Serologist produced at Exh.37 shows that blood group of the deceased was 'B' and that the same group of blood was found on the axe and clothes discovered pursuant to disclosure statement made by the appellant. This establishes that the appellant was in close proximity of the deceased when the deceased was fatally wounded and lends corroboration to the testimony of eye witness Gulshan Amad which is supported by the evidence of Yarmamad Husen.

11. The testimony of complainant Haji Hasam Ramjan, Exh.10, read with that of witness Mamad Rahim Ali Exh.14 establishes the motive for crime. As per the testimony of witness Mamad Rahim, father of the appellant had proposed to him to arrange betrothal of his daughter Amirkhatun with the appellant, but that suggestion was not accepted by him and that he had got his daughter

married to the deceased. The father of the deceased i.e. the complainant has clearly stated that because of this, the appellant was bearing grudge against the deceased and, therefore, had inflicted an axe blow on neck of the deceased and caused his murder. This assertion made by the witness could hardly be demolished. The motive proved for commission of crime also lends corroboration to testimony of eye witness.

12. This brings the Court to consider the question whether offence under Section 302 I.P.C. is made out or not. Though the medical officer has not stated that the injury sustained by the deceased was sufficient in the ordinary course of nature to cause his death, the evidence adduced by the prosecution establishes that the deceased was unarmed when he was assaulted from back by the appellant with a deadly weapon like an axe. The evidence further establishes that the appellant had caused injury on neck of the deceased, which is a vital part and the injury was caused with such a great force that the deceased had died instantaneously. The cause of death, according to the medical evidence, was injuries to vital parts of neck, brain and rupture of major artery/aorta. It is true that Medical Officer, who conducted autopsy on the dead body of the deceased, has not stated that injury sustained by the deceased was sufficient in the ordinary course of nature to cause his death. However, in Brij Bhukhan & Ors. v. State of U.P., AIR 1957 SC 474, it is held that although the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient in the ordinary course of nature to cause death, it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailant intended to cause death of the deceased. Having regard to the nature of injuries sustained by the deceased and described by the Medical Officer before the Court, there is no manner of doubt that injury caused by the appellant to the deceased was sufficient in the ordinary course of nature to cause his death and, therefore, the case would be governed by Clause Thirdly of Section 300 I.P.C. No facts could be brought on record which would bring the case within the ambit of any of the Exceptions provided under Section 300 I.P.C. and, therefore, the offence committed by the appellant is one which is punishable under Section 302 I.P.C. Under the circumstances, the finding recorded by the learned Judge of the trial Court that the appellant is liable to be convicted under Section 302 I.P.C. cannot be said to be erroneous or illegal so as to warrant interference of this Court in instant appeal.

13. It is wrong to contend that the learned Judge of the trial Court has not appreciated the defence of the appellant. The defence of the appellant was only one viz. that he was falsely implicated in the case. In fact, it could not be even suggested to eye witness Gulshan Amad that he had grudge against the appellant or was on inimical terms with him. He had no reason to testify falsely before the Court against the appellant. Before accepting the evidence led by the prosecution, the learned Judge has critically examined the same. Therefore, one would not be justified in arguing that the evidence on record has not been appreciated in its true perspective. The learned counsel of the appellant has failed to dislodge the reasons assigned by the learned Judge for convicting the appellant under Section 302 I.P.C. The appeal is, therefore, liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.Panchal,J.)

(M.C.Patel,J.)

(patel)